

IN THE DRAWING

Please replace the existing drawings with the replacement drawings included herewith. The replacement drawings include Figures 1-14. The nature of the changes is explained below. No new matter has been entered.

REMARKS

In response to the Office Action mailed March 21, 2006, Applicants respectfully request reconsideration. To further the prosecution of this Application, Applicants have amended the claims and present the following remarks. The claims as now presented are believed to be in allowable condition.

Claims 1-35 were pending in this Application. By this Amendment, claims 2 and 12 have been canceled, and their subject matter has been incorporated into independent claims 1 and 11 respectively. Similar features have been incorporated into independent claims 20, 21 and 35. Dependent claims 36-39 have been added. Accordingly, claims 1, 3-11, and 13-39 are now pending in this Application. Claims 1, 11, 20, 21 and 35 are independent claims.

It is respectfully noted that the amendment to claims 1 and 11 herein is fully equivalent to re-writing claims 2 and 12 in independent form, and therefore claims 1 and 11 amount to "claims not amended by applicant" for purposes of applying MPEP § 706.07(a) regarding finality of any subsequent Office Action.

Substitute Specification and Replacement Figures

A substitute specification and replacement figures are submitted herewith. The specification as originally filed includes an Appendix A which includes in-line figures in addition to Figures 1-6 presented on separate drawing sheets in the normal fashion. As the application text cannot be printed in this form, it is necessary to move the in-line figures to separate drawing sheets. This action has been taken. Specifically, figures 1-8 discussed in the text of Appendix A are now identified as Figures 7-14. The Brief Description of the Drawings has been amended to reflect this change, and these figures have been removed from the text. Also, the identification of the text as "Appendix A" has been deleted, such that the text is now a regular part of the text of the application. No new matter has been entered.

Rejections under §102 and §103

Claims 1-3, 7, 8, 10-13, 17, 18 and 20-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ueno in view of McCanne, and the remaining claims were rejected under 35 U.S.C. §103(a) as being unpatentable over Ueno in view of McCanne and other references. Applicants respectfully traverse each of these rejections and request reconsideration. The claims are in allowable condition.

In order to properly reject the claims under 35 U.S.C. §103, the Patent Office must establish a *prima facie* case of obviousness, and thus must meet three criteria:

“First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

It is respectfully submitted that the above test is not satisfied by the combination of Ueno and McCanne, because the combination of these references does not teach or suggest at least one element of all the independent claims of this application as amended herein.

Claim 1 recites a method in a transferring node for distributing data in an overlay network, which includes the following (underline added):

...

wherein the collection of data represents content distributed as a stream of packets to the hierarchical network from a source node, and wherein:

the step of receiving the collection of data comprises receiving the stream of packets in a buffer;

the step of transferring the copy of the collection of data comprises propagating the stream of packets from the buffer to descendent nodes of the transferring node for access by a first client making a first request for the collection of data from the descendent node; and

the step of storing the collection of data comprises transferring the stream of packets from the buffer to the data storage in the transferring node in a manner enabling access to the collection of data by a second client making a second request for the collection.

Thus the method of claim 1 includes both propagating a received stream of packets from a buffer to descendent nodes of the transferring nodes and transferring the packets from the buffer to the data storage of the transferring node, to enable later access by a second client.

The teaching of Ueno has been summarized elsewhere. For present purposes it is noted that, contrary to the assertion on page 4 of the Office Action, Ueno is not seen to teach or suggest the above-underlined portions of claim 1. The Office Action refers to col. 1, lines 39-45 of Ueno, but this section describes only that the video servers include a cache in which a video is stored for transmitting requested video information to a user and to be reused on another user's demand. There is no description in this section or elsewhere in Ueno of how the video comes to be stored in a video server, nor of propagating a stream of packets from a buffer of the video server to the user and also transferring the stream of packets from any such buffer to data storage in the video server. While page 4 of the Office Action also refers to col. 18, lines 14-51 of Ueno, this section is seen to describe only that a network resources management control unit manages and controls network resources such as the bands of transmission lines contained in the core network and the buffer capacities of "exchange nodes." There is no description of what constitutes an "exchange node." There also is no description in this area of any use of buffers in the video servers, nor any description of both transferring packets from a buffer of an exchange node to

a client (e.g. user) and transferring packets from any such buffer to data storage of an exchange node.

Thus, it is respectfully submitted that at least the above-underlined portions of claim 1 are nowhere taught or suggested in Ueno or the other cited prior art. If the rejection of claim 1 is to be maintained, Applicant(s) respectfully request that it be pointed out with particularity where the cited prior art teaches the above-underlined portions of claim 1. But in the absence of any such teaching in Ueno and the other art of record, claim 1 patentably distinguishes over the cited prior art, and accordingly, claim 1 is now in allowable condition.

Because the remaining claims incorporate, either directly or indirectly, features like those discussed above with respect to claim 1, the remaining claims are also seen to be in allowable condition for at least the same reasons.

In view of the foregoing, it is believed that this application is now in condition for allowance. Favorable action is respectfully requested.

Newly Added Claims

Claims 36-39 have been added and are believed to be in allowable condition. Claims 36-37 depend from claim 1, and claims 38-39 depend from claim 11. Support for these claims is provided within the Specification, for example, on page 20, line 27 through page 21 line 11. No new matter has been added.

Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this effect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicant's Representative at the number below.

Applicants hereby petition for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this

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response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3661.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-2900, in Westborough, Massachusetts.

Respectfully submitted,


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Attorney Docket No.: 1004-056.002

Dated: June 20, 2006